

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

C.R.No.4012 of 2006

DATE OF ORDER: 13-3-2007

Joginder Singh

...Petitioner(s)

Versus

Parmodh Kumar Kapoor

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. Vikram Bajaj, Advocate.

None for the respondent.

M.M. AGGARWAL,J

On the last date also, none for the respondent had appeared.

This is civil revision against order dated 17.4.2006 passed by District Judge, Ferozepur whereby appeal filed by the present petitioner had been dismissed because it was not filed within the prescribed period of limitation.

The delay in filing the appeal before the first appellate Court is 35 days. Suit was for specific performance and in the alternative decree was for recovery of Rs.2,25,000/- as against the defendant, now petitioner.

On behalf of the petitioner, it is argued that the defendant-petitioner was a poor person. He could not arrange sufficient court fee to file appeal and therefore there had been delay. A judgment of this Court reported in Smt Phullo Devi v. Jagat Ram, 2002(4) RCR (Civil) had been relied.

There was delay of only 35 days in filing the appeal. The cardinal principle is that the appeal should have been decided on merits. Now, none has come present to contest in spite of service especially when even appearance had been put up on behalf of the plaintiff-respondent.

Under these circumstances, this petition is allowed. It is

directed that the delay in filing the appeal shall be condoned by the first appellate Court subject to payment of Rs.2000/- as costs and Rs.5000/- as expenses to the plaintiff, now respondent. Same be deposited in the first appellate Court within a period of one month and then first appellate Court shall take up the file for rehearing of the appeal after issuing notice to the parties.

March 13, 2007
manoj

(M.M. AGGARWAL)
JUDGE